IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.344 OF 2006
IN
SUIT NO.333 OF 2006

Procter and Gamble Hygiene and Health Care Ltd. & Anr. ...Plaintiffs

V/s.

Haryana Punjab Pharmacy ...Defendants

Mr. Kailash Lad, Advocate, i/b. DSK Legal, for the Plaintiffs.

None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 28TH AUGUST, 2006.

P.C. :

. The suit is filed for infringement and passing off in respect of the Plaintiffs mark "VICKS" and for infringement of the Plaintiffs' copyright especially Exhibit "M" to the plaint. The Defendants have used the mark "VIKAS". The Defendants have also used an identical sachet/packet for the purpose of the said goods with artistic work almost identical to that of the Plaintiffs. The Defendants' sachet is at Exhibit "O" to the plaint.

2. The marks "VICKS" and "VIKAS" are visually similar. They are also phonetically similar. The phonetic similarity arises in view of the fact that the word "VICKS" can well be pronounced in a manner similar to the word "VIKAS". This is in view of the fact that in every country including India, the words are pronounced in their own peculiar way.

3. As far as the copyright is concerned, the Defendants' work at Exhibit "O" is identical in its concept and colour scheme. The few difference in fact only indicate an attempt to conceal the infringement.

4. By an order dated 7th February, 2006, I had granted ad-interim reliefs in terms of prayers (a), (b) and (c). I had also granted ad-interim reliefs in terms of prayer (d) excepting the words bracketed in red.

5. Pursuant to the said order, the Court Receiver has executed the said order.

6. The material is now in the custody of the Court Receiver.

7. There is no affidavit-in-reply. The Defendants are absent, despite being served.

8. There is nothing on record which persuades me to take a view different from the one I took in my order dated 7th February, 2006.

9. In the circumstances, the Notice of Motion is made absolute in terms of prayers (a), (b), (c), (d)-except the portion bracketed in red and (e)